general, agreements in restraint of marriage are invalid, there is a limitation to the rule that must be observed. Of necessity there are many contracts that restrict marriage incidentally, owing to the nature of the services performed. A good test as to whether a contract should be deemed illegal as a whole may be taken from analogous cases in the law of property. Where, under a will, there is a condition that the property be forfeited on the legatee's marrying, the condition is void. *Morley* v. *Reynoldson*, 2 Hare, 570. Where, however, a devise is made to be forfeited on the devisee's marrying, if it appear that the object of the devise is to provide for the devisee while single, and not to restrict his marriage, the devise is valid, even though the devisee may be induced to remain single in order to enjoy the benefits of the property. *Arthur* v. *Cole*, 56 Md. 100. In the principal case, the court regarded the services of housekeeper as the main engagement, and the promise not to marry as merely incident thereto. The object of the transaction was not to restrict marriage in any way, but to have the services performed by a single woman. The court held that such a transaction was valid and enforceable, and though in a *dictum* the court perhaps goes too far in saying it was immaterial whether the plaintiff married or not, the decision, it would seem, reaches a correct result. See 12 HARVARD LAW REVIEW, 424.

DOUBLE INHERITANCE TAXES. — In these days of expensive wars of colonization, and consequent increased taxation, the way of the legatee is hard. Succession taxes are both heavy and rigidly enforced. But the most conspicuous instance of exacting the uttermost possible farthing from a beneficiary under a will is to be found in a recent English case. A father devised certain freehold estates to his son. The son died in the lifetime of his father, leaving issue which survived the father, and devising his property to trustees upon certain trusts. Section 33 of the Wills Act provides that where property is devised to a child of the testator, who dies in the testator's lifetime, leaving issue which survives the testator, such devise "shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator." The Finance Act, 57 and 58 Vict. c. 30, secs. 1 and 2, enacts that an estate duty shall be levied on all property passing at a person's death, of which the deceased was at the time of his death competent to dispose. The crown collected an inheritance tax from the father's estate, and then claimed a further tax on the same property from the executors of the son. The court held that the effect of section 33 of the Wills Act was to pass the real estate to the child in fee, to devolve as part of his property, and consequently that it was subject to a second inheritance tax from his executors. *Re Scott (deceased)*, 83 L. T. Rep. 613.

It has been forcibly contended that the effect of section 33 of the Wills Act is not a fictitious projection forward of life or postponement of death on the part of the devisee, but that the statute must be construed with its object in mind — to do for a testator what he himself would have done had he thought of the contingency that has arisen. 1 Underhill, Wills, 454. It is extremely probable that the framers of the act never contemplated that it would have any such effect as that given to it by the construction adopted in the principal case — which, indeed, if pressed to its logical conclusion, might produce the absurdity of a constructive bigamy,

to say nothing of a constructive murder. *Re Scott*, [1900] 1 Q. B. 372, 382. Nevertheless this construction is supported by several earlier cases. *Executors of Perry* v. *The Queen*, L. R. 4 Ex. 27; *Eager* v. *Furnival*, 17 Ch. D. 115. And it is extremely difficult to overcome the obstacle raised by the express provision of the statute that the devise shall take effect as if the death of the devisee "had happened immediately after the death of the testator." Possibly, had the question not been prejudiced by these earlier cases, more consideration might have been given to the argument of the counsel for the executors that the true effect would be given to the act, not by creating a fiction, but by causing the child's will to be read as part of the father's, supported as this contention is by the mode adopted in the United States of construing similar sections of the state acts. *Suydam* v. *Vorhees*, 43 Atl. Rep. 4 (N. J.); *Newbold* v. *Pritchett*, 2 Whar. Pa. 46. It is true that the American statutes are not phrased in precisely the same terms as the English act — generally, indeed, expressly providing that the issue of the devisee shall take the estate devised, Conn. Gen. Stat. 1875, tit. 18, ch. 11, p. 370, or, as in Pennsylvania, that such devise "shall be good and available in favor of such surviving issue" of the devisee, "with like effect as if such devisee had survived the testator." Bright. Purd. Digest, 1700–1872, vol. 2, p. 1476. The American courts contend that to hold that the original devisee took an interest would entirely defeat the objects for which these sections were inserted — namely to benefit the more remote descendants of the testator, and not to give scope to the caprices of the devisee by a distribution under his will, or to provide for the payment of his creditors.

The precise question of the principal case probably would not arise in New York or in several other States where the inheritance tax is expressly levied on the property of which a party dies "seised or possessed." N. Y. Laws of 1887, ch. 713, § 1. In Massachusetts and possibly in a majority of the States, however, the statute imposes the tax generally on all property "which shall pass by will or by the laws of the Commonwealth regulating intestate succession," and is thus substantially similar to the English Act. Mass. Laws of 1891, chap. 425.

THE PROTECTION OF THE STATE HOUSE AT BOSTON. — The statute of 1899, enacted with the object of protecting the State House at Boston from the encroachments of high buildings, has recently been passed upon by the Supreme Court of Massachusetts. The act provided that all buildings within a small district west of the State House should be limited to the height of seventy feet, and that, in so far as the act or proceedings to enforce it might deprive any person of rights existing under the Constitution, compensation should be recoverable by petition. Mass. Laws of 1899, c. 457. On petition by several owners of land affected to have the amount of their damages assessed, a demurrer was interposed by the state, the attorney-general contending that the statute was a valid exercise of the police power, and hence that no constitutional right was infringed so as to give the petitioners a claim for compensation. The court, however, speaking through Chief Justice Holmes, overruled the demurrer. They held that the statute could not be construed as a legislative adjudication that the public welfare required that this property should be so restricted without compensation in the exercise of the police power,